

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|------------------------|---|---------------------------------|
| In re Application of: |) | Group Art Unit: 3725 |
| |) | |
| MELVIN A. ZEHR |) | June 3, 2004 |
| |) | |
| Serial No.: 10/008,407 |) | Examiner: Mark Rosenbaum |
| |) | |
| Filed: 11/13/2001 |) | Title: STATIONARY CONE OVER TUB |
| |) | |
| |) | |

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
Pursuant to 37 CFR 1.181(a)**

TO: Commissioner for Patents
Mail Stop Petition
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant in the above-referenced case hereby petitions pursuant to 37 CFR §1.181(a) for revival of the above-referenced application on the grounds of non-receipt of the Response to Office Action dated 16 September 2003. No fee is required for this Petition.

The grounds for the Petition are as follows:

- a) The Examiner issued an Office Action dated 16 September 2003. A copy of this Office Action is enclosed herein and labeled Exhibit A.
- b) A Response to the Office Action was due 3 months from the mailing date of the communication. The Response was filed on 3 December 2003. A complete copy of this Response is enclosed herein and labeled Exhibit B.

PETITION TO REVIVE - 1

c) As proof of mailing, a return receipt postcard was attached to the Office Action. The return receipt postcard was stamped by the Patent and Trademark Office and returned to our office via first class mail on December 8, 2003. A copy of the return receipt postcard is attached hereto and labeled Exhibit C.

e) A Notice of Abandonment was received in this office based on the Applicant's failure to timely file a Response to the Office Action. A copy of the Notice of Abandonment is attached hereto and labeled Exhibit D.

As can be seen from the above list of exhibits, the Response to Office Action dated 16 September 2003 was indeed transmitted to the Patent Office. It is apparent that the Response was misplaced or misrouted within the Patent Office before the deadline for abandonment. The Applicant respectfully submits that this is an appropriate case to Withdraw Holding of Abandonment based on non-receipt of the Response to Office Action.

Wherefore, Applicant petitions the Commissioner to revive this application, reinstate it, and pass the case on to issue.

If there is an additional problem with this Petition, or if the reviewer has any questions, he is requested to call the Applicant's attorney at the number set forth below.

Respectfully submitted this 3rd day of June, 2004.

ROBERT L. SHAVER
Reg. No. 42,145
(208) 345-1122

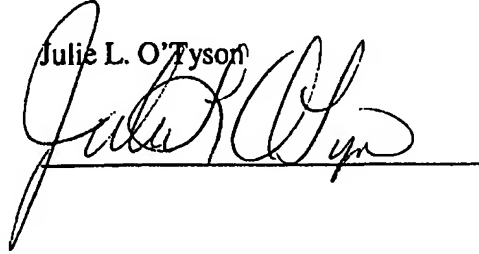
PETITION TO REVIVE - 2

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents
P.O. Box 1450 Alexandria, Virginia 22313-1450, on

DATE: June 3, 2004

Julie L. O'Tyson

A handwritten signature in dark ink, appearing to read "Julie L. O'Tyson", is written over a horizontal line.

PETITION TO REVIVE - 3



UNITED STATES PATENT AND TRADEMARK OFFICE

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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/008,407 | 11/13/2001 | Melvin A. Zehr | DIAZ113 | 2967 |

21658 7590 09/16/2003

DYKAS, SHAVER & NIPPER, LLP
P O BOX 877
BOISE, ID 83701-0877

EXAMINER

ROSENBAUM, MARK

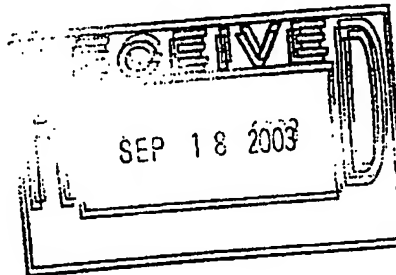
ART UNIT

PAPER NUMBER

3725

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



CALENDAR

12/16/03



Office Action Summary

Application No.

10/008,407.

Applicant(s)

ZEHR, MELVIN A.

Examiner

Mark Rosenbaum

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 8 is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Allowable Subject Matter

Claims 1-6,8 are allowed.

Claim Rejections - 35 USC § 112

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It still is not clear what is being positively claimed in this claim.

Claim Rejections - 35 USC § 102

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Pearce, Tamura et al, or Bladykas. See paper number 5 for this rejection.

Response to Arguments

Applicant's arguments filed 7/28/03 have been fully considered but they are not persuasive. The 35 USC 112 rejection remains appropriate because of the claim format. The preamble of the claim is 'A loading assistance device....., said loading assistance device comprising'. By using this format, the apparatus prior to the comprising clause is not being positively claimed i.e. the grinding chamber is not being claimed. And if the chamber is not being claimed, how can the smaller end of the device extend through it as set forth in lines 7-8? With the chamber not being positively claimed, the 35 USC 102 rejection also remains proper since all of the references use stationary,

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frustoconical hoppers. The fact that the prior art chambers do not rotate is irrelevant since applicant is not claiming the chamber.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Rosenbaum whose telephone number is 703-308-1788. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Ostrager can be reached on 703-308-3136. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

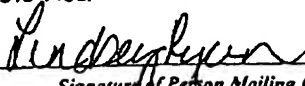
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Art Unit: 3725

Page 4



Mark Rosenbaum
Primary Examiner
Art Unit 3725

MR

| | | | |
|--|----------------------------------|------------------------------------|-------------------------------|
| TRANSMITTAL LETTER (General - Patent Pending) | | | Docket No. DIAZ113 |
| In Re Application Of: ZEHR, MELVIN A. | | | |
| Serial No. 10/008,407 | Filing Date 11/13/2001 | Examiner ROSENBAUM, MARK | Group Art Unit 3725 |
| Title: STATIONARY CONE OVER TUB | | | |
| <p style="text-align: center;"><u>TO THE COMMISSIONER FOR PATENTS:</u></p> <p>Transmitted herewith is:</p> <p>RESPONSE TO EXAMINER'S ACTION DATED 09/16/03 RETURN RECEIPT POSTCARD</p> <p style="text-align: right; font-size: 2em; opacity: 0.5;">COPY</p> <p>in the above identified application.</p> <p><input checked="" type="checkbox"/> No additional fee is required.</p> <p><input type="checkbox"/> A check in the amount of _____ is attached.</p> <p><input type="checkbox"/> The Director is hereby authorized to charge and credit Deposit Account No. _____ as described below.</p> <p style="margin-left: 20px;"><input type="checkbox"/> Charge the amount of _____</p> <p style="margin-left: 20px;"><input type="checkbox"/> Credit any overpayment.</p> <p style="margin-left: 20px;"><input type="checkbox"/> Charge any additional fee required.</p> <p style="text-align: right; margin-top: 20px;">Dated: DECEMBER 3, 2003</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div style="width: 45%;"><p style="text-align: center; margin-bottom: 5px;"><i>Signature</i></p><p>ROBERT L. SHAVER DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 BOISE, IDAHO 83701 (208) 345-1122 REG. NO. 42,145 CUST. NO. 21658</p><p style="margin-top: 20px;">cc: CLIENT</p></div><div style="width: 45%; border: 1px solid black; padding: 5px;"><p style="font-size: 0.8em;">I certify that this document and fee is being deposited on 12/03/03 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p><div style="text-align: center; margin-top: 10px;"> <i>Lindsey Ryan</i></div><p style="text-align: center; font-size: 0.8em;">Signature of Person Mailing Correspondence</p><div style="text-align: center; margin-top: 10px;">LINDSEY RYAN</div><p style="text-align: center; font-size: 0.8em;">Typed or Printed Name of Person Mailing Correspondence</p></div></div> | | | |



Response to Office Action dated 09/16/03, General
Transmittal with Certificate of Mailing by First Class Mail

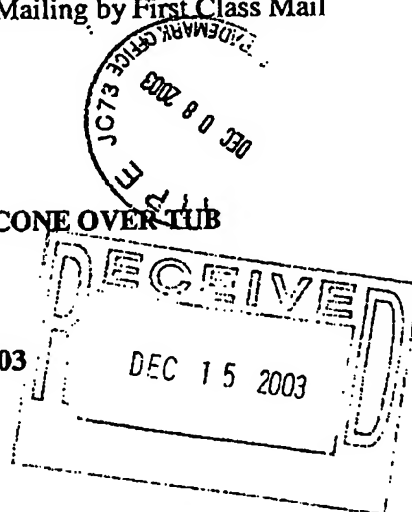
Applicant: ZEHR

Ser. No.: 10/008,407

Title: STATIONARY CONE OVER TUB

Our File: DIAZ113

Date: December 3, 2003





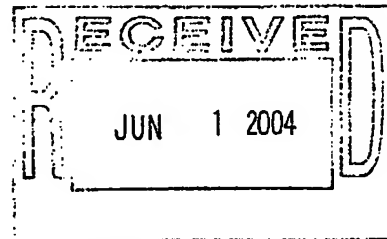
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/008,407 | 11/13/2001 | Melvin A. Zehr | DIAZ113 | 2967 |
| 21658 | 7590 | 05/28/2004 | EXAMINER | |
| DYKAS, SHAVER & NIPPER, LLP | | | ROSENBAUM, MARK | |
| P.O. BOX 877 | | | ART UNIT | |
| 802 WEST BANNOCK STREET, SUITE 405 | | | PAPER NUMBER | |
| BOISE, ID 83701 | | | 3725 | |

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

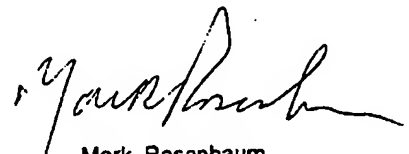


| | | | |
|------------------------------|-----------------|-----------------|--|
| Notice of Abandonment | Application No. | Applicant(s) | |
| | 10/008,407 | ZEHR, MELVIN A. | |
| | Examiner | Art Unit | |
| | Mark Rosenbaum | 3725 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 September 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:



Mark Rosenbaum
Primary Examiner
Art Unit: 3725

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



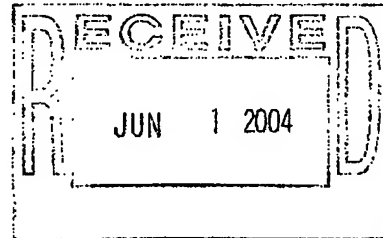
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| 10/008,407 | 11/13/2001 | Melvin A. Zehr | DIAZ113 | 2967 |
| 21658 | 7590 | 05/28/2004 | EXAMINER | |
| DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 802 WEST BANNOCK STREET, SUITE 405 BOISE, ID 83701 | | | ROSENBAUM, MARK | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3725 | |

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**Petition to Withdraw Holding of Abandonment with
Exhibits A through D, General Transmittal w/Certificate
of Mailing by First Class Mail**

Invention: STATIONARY CONE OVER TUB

Applicant: ZEHR

Serial #: 10/008,407

Our File: DIAZ113

Date: June 3, 2004

